



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2009 REGULAR SESSION

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HOUSE BILL NO. 372

AS ENACTED

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FRIDAY, MARCH 13, 2009

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DATE March 20, 2009  
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TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Allen

AN ACT relating to probation and parole.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

1        ➔Section 1. KRS 439.340 is amended to read as follows:

- 2        (1) The board may release on parole persons confined in any adult state penal or  
3        correctional institution of Kentucky or sentenced felons incarcerated in county jails  
4        eligible for parole. All paroles shall issue upon order of the board duly adopted. As  
5        soon as practicable after his or her admission to an adult state penal or correctional  
6        institution or county jail if he or she is a sentenced felon, and at such intervals  
7        thereafter as it may determine, the Department of Corrections shall obtain all  
8        pertinent information regarding each prisoner, except those not eligible for parole.  
9        The information shall include his or her criminal record, his or her conduct,  
10       employment, and attitude in prison, and the reports of physical and mental  
11       examinations that have been made. The Department of Corrections shall furnish the  
12       circumstances of his or her offense and his or her previous social history to the  
13       institution and the board. The Department of Corrections shall prepare a report on  
14       any information it obtains. It shall be the duty of the Department of Corrections to  
15       supplement this report with any material the board may request and submit the  
16       report to the board.
- 17       (2) Before granting the parole of any prisoner, the board shall consider the pertinent  
18       information regarding the prisoner and shall have him or her appear before it for  
19       interview and hearing. The board in its discretion may hold interviews and hearings  
20       for prisoners convicted of Class C felonies not included within the definition of  
21       "violent offender" in KRS 439.3401 and Class D felonies. The board in its  
22       discretion may request the parole board of another state confining prisoners  
23       pursuant to KRS 196.610 to interview eligible prisoners and make a parole  
24       recommendation to the board. A parole shall be ordered only for the best interest of  
25       society and not as an award of clemency, and it shall not be considered a reduction

of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his or her proper employment or for his or her maintenance and care, and when the board believes he or she is able and willing to fulfill the obligations of a law abiding citizen. Notwithstanding any statute to the contrary, including KRS 440.330, when a prisoner is otherwise eligible for parole and the board has recommended parole for that prisoner for the reasons set forth in this subsection, the board may grant parole to any prisoner wanted as a fugitive by any other jurisdiction, and the prisoner shall be released to the detainer from that jurisdiction. Such parole shall not constitute a relinquishment of jurisdiction over the prisoner, and the board in all cases expressly reserves the right to return the prisoner to confinement in a correctional institution of the Commonwealth if the prisoner violates the terms of his or her parole.

(3) (a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years who is confined to a state penal institution or county jail shall have his or her case reviewed by the Parole Board after serving fifteen percent (15%) or two (2) months of the original sentence, whichever is longer.

(b) Except as provided in paragraph (a) of this subsection, the board shall adopt administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. Regulations governing the eligibility of prisoners for parole shall be in accordance with professionally accepted ideas of correction and reform and may utilize in part objective, performance-based criteria; however, nothing herein contained shall preclude the board from utilizing its present regulations in conjunction with other factors involved that would relate to the inmate's needs and the safety of the public.

- 1 (4) The board shall insure that sentenced felons confined in county jails are considered  
2 for parole within thirty (30) days of their parole eligibility date and the Department  
3 of Corrections shall provide the necessary assistance and information to the board in  
4 order for it to conduct timely parole reviews.
- 5 (5) In addition to or in conjunction with each hearing conducted under subsection (2) of  
6 this section for any prisoner convicted of a Class A, B, or C felony and prior to the  
7 granting of a parole to any such prisoner, the parole board shall conduct a hearing of  
8 which the following persons shall receive not less than forty-five (45) nor more than  
9 ninety (90) days' notice: the Commonwealth's attorney who shall notify the sheriff  
10 of every county and the chief of police of every city and county in which the  
11 prisoner committed any Class A, B, or C felony for which he or she is imprisoned,  
12 and all identified victims of the crimes or the next of kin of any victim who is  
13 deceased. Notice to the Commonwealth's attorney shall be by mail, fax, or  
14 electronic means at the discretion of the board, and shall be in a manner that ensures  
15 receipt at the Commonwealth attorney's business office. Notices received by chiefs  
16 of police and sheriffs shall be posted in a conspicuous location where police  
17 employed by the department may see it. Notices shall be posted in a manner and at a  
18 time that will allow officers to make comment thereon to the Parole Board. Notice  
19 to victims or their next of kin shall be made, for prisoners incarcerated prior to July  
20 15, 1986, by mail, fax, or electronic means at the discretion of the board, and shall  
21 be in a manner that ensures receipt by the Commonwealth's attorney, who shall  
22 forward the notice promptly to the victims or their next of kin at their last known  
23 address. For prisoners incarcerated on or after July 15, 1986, notice to the victims or  
24 their next of kin shall be by mail from the Parole Board to their last known address  
25 as provided by the Commonwealth's attorney to the Parole Board at the time of  
26 incarceration of the prisoner. Notice to the victim or the next of kin of subsequent  
27 considerations for parole after the initial consideration shall not be sent if the victim

1 or the next of kin gives notice to the board that he or she no longer wants to receive  
2 such notices. The notice shall include the time, date, and place of the hearing  
3 provided for in this subsection, and the name and address of a person to write if the  
4 recipient of the notice desires to attend the hearing or to submit written comments.

5 (6) Persons receiving notice as provided for in subsection (5) of this section may  
6 submit comments, in person or in writing, to the board upon all issues relating to the  
7 parole of the prisoner. The board shall read and consider all comments prior to  
8 making its parole decision, if they are received by the board not less than seven (7)  
9 days before the date for the hearing. The board shall retain all comments in the  
10 prisoner's permanent Parole Board file, and shall consider them in conjunction with  
11 any subsequent parole decisions affecting the prisoner. In addition to officers listed  
12 in subsection (5) of this section, the crime victims or the next of kin of any victim  
13 who is deceased or who is disabled and cannot attend the hearing or the parent or  
14 legal guardian of any victim who is a minor may attend the hearing provided for in  
15 subsection (5) of this section and present oral and written comments upon all issues  
16 relating to the parole of the prisoner, if they have advised the board, in writing  
17 received by the board not less than seven (7) days prior to the date set for the  
18 hearing, of their intention to attend the hearing. The board shall receive and  
19 consider all comments, shall make a record of them which it shall retain in the  
20 prisoner's permanent Parole Board file, and shall consider them in conjunction with  
21 any subsequent parole decision affecting the prisoner. Persons appearing before the  
22 Parole Board pursuant to this subsection may elect to make their presentations  
23 outside of the presence of the prisoner.

24 (7) Victims of Class D felonies may submit comments in person or in writing to the  
25 board upon all issues relating to the parole of a prisoner.

26 (8) Any hearing provided for in subsections (5), (6), and (7) of this section shall be  
27 open to the public unless the persons having a right to appear before the board as

1 specified in those subsections request closure of hearing for reasons of personal  
 2 safety, in which event the hearing shall be closed. The time, date, and location of  
 3 closed hearings shall not be disclosed to the public.

4 (9) Except as specifically set forth in this section, nothing in this section shall be  
 5 deemed to expand or abridge any existing rights of persons to contact and  
 6 communicate with the Parole Board or any of its members, agents, or employees.

7 (10) The unintentional failure by the Parole Board, sheriff, chief of police, or any of its  
 8 members, agents, or employees or by a Commonwealth's attorney or any of his or  
 9 her agents or employees to comply with any of the provisions of subsections (5),  
 10 (6), and (8) of this section shall not affect the validity of any parole decision or give  
 11 rise to any right or cause of action by the crime victim, the prisoner, or any other  
 12 person.

13 (11) No eligible sexual offender within the meaning of KRS 197.400 to 197.440 shall be  
 14 granted parole unless he or she has successfully completed the Sexual Offender  
 15 Treatment Program.

16 (12) Any prisoner who is granted parole after completion of the Sexual Offender  
 17 Treatment Program shall be required, as a condition of his or her parole, to  
 18 participate in regular treatment in a mental health program approved or operated by  
 19 the Department of Corrections.

20 (13) When an order for parole is issued, it shall recite the conditions thereof.

21 ➔Section 2. KRS 439.344 is amended to read as follows:

22 The period of time spent on parole shall~~[not]~~ count as a part of the prisoner's~~[maximum]~~  
 23 sentence, except when a parolee is:

24 (1) Returned to prison as a parole violator for a new felony conviction;

25 (2) Classified as a violent offender pursuant to KRS 439.3401; or

26 (3) A registered sex offender pursuant to KRS 17.500 to 17.580~~[in determining~~  
 27 ~~parolee's eligibility for a final discharge from parole as set out in KRS 439.354].~~

➔Section 3. KRS 439.354 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, when any paroled prisoner has performed the obligations of his or her parole during his or her period of active parole supervision the board may, at the termination of such period to be determined by the board, issue a final discharge from parole to the prisoner. Unless ordered earlier by the board, a final discharge shall be issued when the prisoner has been out of prison on parole a sufficient period of time to have been eligible for discharge from prison by minimum~~maximum~~ expiration of sentence had he or she not been paroled, provided before this date he or she had not absconded from parole supervision or that a warrant for parole violation had not been issued by the board.

(2) When any paroled prisoner classified as a violent offender pursuant to KRS 439.3401, or registered as a sex offender pursuant to KRS 17.500 to 17.580, has performed the obligations of his or her parole, the board shall issue a final discharge from parole to the prisoner when the prisoner has been out of prison on parole a sufficient period of time to have been eligible for discharge from prison by maximum expiration of sentence had he or she not been paroled, provided before this date he or she had not absconded from parole supervision or that a warrant for parole violation had not been issued by the board.

➔Section 4. KRS 532.050 is amended to read as follows:

(1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody~~and is ineligible for probation or conditional discharge~~.

- 1 (2) The report shall be prepared and presented by a probation officer and shall include  
2 an analysis of the defendant's history of delinquency or criminality, physical and  
3 mental condition, family situation and background, economic status, education,  
4 occupation, personal habits, and any other matters that the court directs to be  
5 included.
- 6 (3) Before imposing sentence for a felony conviction, the court may order the defendant  
7 to submit to psychiatric observation and examination for a period not exceeding  
8 sixty (60) days. The defendant may be remanded for this purpose to any available  
9 clinic or mental hospital or the court may appoint a qualified psychiatrist to make  
10 the examination.
- 11 (4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior  
12 to determining the sentence or prior to final sentencing for youthful offenders, the  
13 court shall order a comprehensive sex offender presentence evaluation of the  
14 defendant to be conducted by an approved provider, as defined in KRS 17.500, the  
15 Department of Corrections, or the Department of Juvenile Justice if the defendant is  
16 a youthful offender. The comprehensive sex offender presentence evaluation shall  
17 provide to the court a recommendation related to the risk of a repeat offense by the  
18 defendant and the defendant's amenability to treatment and shall be considered by  
19 the court in determining the appropriate sentence. A copy of the comprehensive sex  
20 offender presentence evaluation shall be furnished to the court, the  
21 Commonwealth's attorney, and to counsel for the defendant. If the defendant is  
22 eligible and the court suspends the sentence and places the defendant on probation  
23 or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All  
24 communications relative to the comprehensive sex offender presentence evaluation  
25 and treatment of the sex offender shall fall under the provisions of KRS 197.440  
26 and shall not be made a part of the court record subject to review in appellate  
27 proceedings. The defendant shall pay for any comprehensive sex offender

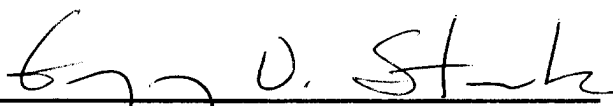


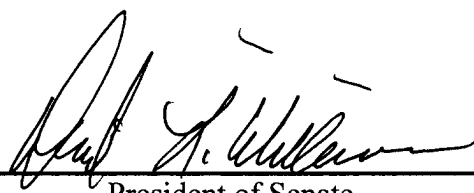
1 presentence evaluation or treatment required pursuant to this section up to the  
2 defendant's ability to pay but no more than the actual cost of the comprehensive sex  
3 offender presentence evaluation or treatment.

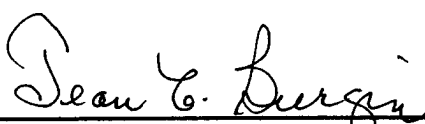
4 (5) The presentence investigation report shall identify the counseling treatment,  
5 educational, and rehabilitation needs of the defendant and identify community-  
6 based and correctional-institutional-based programs and resources available to meet  
7 those needs or shall identify the lack of programs and resources to meet those needs.

8 (6) Before imposing sentence, the court shall advise the defendant or his or her counsel  
9 of the factual contents and conclusions of any presentence investigation or  
10 psychiatric examinations and afford a fair opportunity and a reasonable period of  
11 time, if the defendant so requests, to controvert them. The court shall provide the  
12 defendant's counsel a copy of the presentence investigation report. It shall not be  
13 necessary to disclose the sources of confidential information.

14 ➔Section 5. The provisions of Sections 1, 2, and 3 of this Act shall control over  
15 any contrary, more expansive, or more permissive provision of 2008 Ky. Acts ch. 127.

  
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Speaker-House of Representatives

  
\_\_\_\_\_  
President of Senate

Attest:   
\_\_\_\_\_  
Chief Clerk of House of Representatives

Approved   
\_\_\_\_\_  
Governor

Date 3-20-09